

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 31, 2000 Session

SANDRA G. JACKSON v. GOODYEAR TIRE & RUBBER COMPANY

**Direct Appeal from the Chancery Court for Obion County
No. 20,524 William Michael Maloan, Chancellor**

No. W1999-01691-WC-R3-CV - Mailed February 1, 2001; Filed March 29, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court determined that the plaintiff had suffered a 20% permanent partial disability to her right arm and a 30% permanent partial disability to her left arm as the result of bilateral carpal tunnel syndrome. The defendant submits that the awards are excessive and that the testimony of the independent medical evaluator should be disallowed due to his failure to utilize the AMA Guidelines in determining grip strength loss. For the following reasons, we disallow that portion of the independent medical evaluator's testimony dealing with grip strength loss but affirm the trial court's award of vocational disability.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right;
Judgment of the Chancery Court is Affirmed.**

J. STEVEN STAFFORD, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and WIL V. DORAN, SP. J., joined.

James M. Glasgow, Jr., Union City, Tennessee, for the appellant, Goodyear Tire & Rubber Company.

Jeffrey A. Garrety, Jackson, Tennessee, for the appellee, Sandra G. Jackson.

MEMORANDUM OPINION

The issue presented in this appeal is one that continues to vex trial judges on a regular basis. The parties have stipulated that the plaintiff's injuries are compensable but have a disagreement as to the extent of vocational disability. Two medical depositions were presented for the trial court's review. The treating physician utilized the AMA Guidelines and found no anatomical impairment.

The evaluating physician declined to use the AMA Guidelines as it related to grip strength loss and determined that the plaintiff had suffered a significant vocational impairment. Although we have determined a portion of the evaluating physician's assessment should be disallowed, we nonetheless affirm the judgment of the trial court.

The plaintiff is a 51 year old female. She is a high school graduate who previously worked at Reelfoot Packing Company and Mar Tenn Hams performing manual labor. The plaintiff went to work for the defendant on April 2, 1984, and has been so employed since that time.

While in the defendant's employ, the plaintiff performed a variety of jobs. She has been a machine cleaner and stock trucker, has serviced presses, cemented tubers, and worked as an operator and batch builder in the banbury department. She is currently building batches which she describes as one of the heaviest jobs in the plant.

In April 1997, the plaintiff developed problems with both her arms. She was first seen by Dr. Batey who referred her to Dr. Claiborne Christian. Dr. Christian diagnosed the plaintiff as suffering from bilateral carpal tunnel syndrome predominantly on the right side. After conservative treatment proved ineffective, an open carpal tunnel release was performed on the plaintiff's right arm on September 19, 1997.

Dr. Christian initially treated the plaintiff's left arm conservatively. When the plaintiff continued to suffer difficulty with her left arm, Dr. Christian performed a carpal tunnel release on the left arm on April 30, 1999.

Dr. Christian used the Jamar Dynamometer to test the plaintiff's grip strength in her right arm and determined that she had suffered no anatomical impairment. He stated that the plaintiff did have a grip strength loss to her right arm. Because it was less than 10%, he declined to award impairment and released the plaintiff to return to work without restriction. In rating the plaintiff's grip strength loss, he used the tables contained in the AMA Guidelines as opposed to the tables accompanying the Jamar Dynamometer. He did not test the plaintiff's left arm with the Jamar Dynamometer but instead utilized opposition strength and two-point discrimination tests.

Dr. Boals saw the plaintiff on March 23, 1999, and July 21, 1999, for purposes of an independent medical evaluation. On March 23, 1999, the plaintiff had an average grip strength of 48 on the right side and 37 on the left side. On July 21, 1999, the plaintiff had an average grip strength of 53 on the right side and 42 on the left side.

Dr. Boals utilized the Jamar Dynamometer in testing the plaintiff's grip strength as well as the accompanying tables rather than the tables contained in the AMA Guidelines. Dr. Boals opined that the plaintiff had suffered a 10% impairment to her right arm and a 20% impairment to her left arm. On cross-examination, he testified that if he had utilized the AMA Guidelines, the plaintiff would have had normal grip strength in both arms. Dr. Boals further opined that the plaintiff should avoid heavy gripping and repetitive work with both hands.

The plaintiff has returned to work and is now earning more money than she did before her injury. She continues to have dull, aching pain in her wrist. She has trouble gripping, grasping, pulling, pushing and opening doors. She has difficulty doing her job as well as she did before the injuries and as quickly as she thinks it should be done. She does not think she is as strong as she used to be. The plaintiff is right-handed, but believes her left arm is worse than her right arm.

The plaintiff has difficulty doing housework, dusting, wiping or opening jars. She is not able to care for her disabled child the same as she could before the injury due to her loss of strength.

The plaintiff takes over-the-counter medication for her pain. She wears wrist bands while at work and while sleeping. Due to the demands of her current job, she is attempting to transfer to a less strenuous position.

ANALYSIS

The defendant submits that the evidence preponderates against the trial court's award of 20% permanent partial disability to the plaintiff's right arm and 30% permanent partial disability to the plaintiff's left arm. The defendant's main contention is that the medical impairment provided by Dr. Boals is invalid because he did not use the AMA Guidelines when evaluating the plaintiff's grip strength.

When medical testimony differs, it is within the discretion of the trial judge to determine which expert testimony to accept. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. 1996); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804 (Tenn. 1990).

“[W]here the issues involve expert medical testimony and all the medical proof is contained in the record by deposition, as it is in this case, then this Court may draw its own conclusions about the weight and credibility of that testimony, since we are in the same position as the trial judge With these principles in mind, we review the record to determine whether the evidence preponderates against the findings of the trial court.”

Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997); see also *Elmore v. Travelers Ins.*, 824 S.W.2d 541, 544 (Tenn. 1992) (when testimony is presented by deposition, this Court is in just as good a position as the trial court to judge the credibility of those witnesses.)

Both Dr. Christian and Dr. Boals testified by deposition. In the course of his ruling, the trial judge specifically noted the continuing controversy over the appropriate table to be utilized when grip strength testing is performed in carpal tunnel cases. It is evident from his ruling that he accredited the opinion of Dr. Boals.

The extent of an injured worker's disability is an issue of fact. See *Jaske v. Murray Ohio Mfg. Co. Inc.*, 750 S.W.2d 150, 151 (Tenn. 1988). T.C.A. § 50-6-204(d)(3) provides as follows:

"To provide uniformity and fairness for all parties, any medical report prepared by a physician furnishing medical treatment to a claimant shall use the American Medical Association Guides to the Evaluation of Permanent Impairment, (American Medical Association) or the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment, (American Academy of Orthopedic Surgeons). A physician shall utilize the most recent edition of either publication in determining the degree of anatomical impairment. A practitioner shall be required to give an impairment rating based on one (1) of the two (2) publications noted above."

Dr. Christian utilized the Jamar Dynamometer in performing the grip strength test on the plaintiff's right arm. He testified that the plaintiff had a grip strength loss but according to the AMA Guidelines, it was not significant enough to assess an impairment. As a result, he did not award the plaintiff any impairment and released her to return to work without restriction.

Dr. Boals testified that he utilized the tables accompanying the Jamar Dynamometer to test the plaintiff's loss of grip strength. He also admitted that if he used the AMA Guidelines, the plaintiff would have normal grip strength. Dr. Boals testified that he did not use the AMA tables because they were outdated and flawed and that the Jamar Dynamometer tables were more accurate.

The statute clearly provides the guidelines physicians are required to use in determining anatomical impairments. In order for this Court to accept Dr. Boals' grip strength test, we would be required to ignore the plain meaning of T.C.A. § 50-6-204(d)(3). It may be that the statutory procedure by which physicians are required to determine anatomical impairments should be changed. However, if so, it is a matter for the legislature and not this Panel. Based on the statute, the grip strength testing performed by Dr. Boals is disallowed. However, this by no means ends the inquiry in this case.

Dr. Boals further testified that as a result of the surgery, the plaintiff suffered an anatomical impairment and that he merely used the grip strength testing to quantitate the results. He also stated that loss of grip strength would have nothing to do with a portion of the impairment he found the plaintiff to be suffering. He additionally opined that the plaintiff should avoid heavy gripping and repetitive work with both hands.

The Tennessee Supreme Court has addressed a similar situation in the case of *Walker v. Saturn Corp.*, 986 S.W.2d 204 (Tenn. 1998). In *Walker*, the plaintiff claimed to have suffered a work-related injury to both arms. She received an impairment rating on her left arm from medical providers but did not receive one on her right arm. Justice Barker, writing for the Court stated as follows:

"An anatomical impairment rating is not always indispensable to a trial court's finding of a permanent vocational impairment. In fact, anatomical impairment is distinct from the ultimate issue of vocational disability that the trial court must assess. An employee should not be denied compensation solely because she is unable to present a witness who will testify to the exact percentage of her medical impairment. As a result, the Panel erred in finding no disability to the plaintiff's right arm based solely on the lack of an anatomical rating to that scheduled member.

....

In assessing the extent of an employee's vocational disability, the trial court may consider the employee's skills and training, education, age, local job opportunities, anatomical impairment rating, and her capacity to work at the kinds of employment available in her disabled condition. Further, the claimant's own assessment of her physical condition and resulting disabilities cannot be disregarded. The trial court is not bound to accept physicians' opinions regarding the extent of the plaintiff's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability."

Walker, 986 S.W.2d at 207-08.

In reviewing the trial court's decision, it is abundantly clear that the trial judge considered all the applicable factors in determining vocational disability. We are to presume the correctness of the trial judge's findings unless the preponderance of the evidence is otherwise. See T.C.A. 50-6-225(e)(2); *Humphrey v. Witherspoon*, 734 S.W.2d 315 (Tenn. 1987). We find that the evidence does not preponderate against the trial court's judgment.

CONCLUSION

We find that the portion of Dr. Boals' testimony relating to the plaintiff's loss of grip strength should be disallowed. However, even disregarding the above mentioned testimony, there are abundant facts in the record to support the vocational impairment awarded by the trial court. The evidence does not preponderate against the award. The judgment of the trial court is affirmed and the costs are taxed to the defendant, Goodyear Tire & Rubber Company.

J. STEVEN STAFFORD, SPECIAL JUDGE

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Defendant/Appellant, Goodyear Tire & Rubber Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM